

Appalachian Surface Coal Mining Initial List Resulting from Enhanced Coordination Procedures

Summary: Pursuant to the Enhanced Coordination Procedures (ECP) established under the June 11, 2009 Memorandum of Agreement (MOU) regarding surface coal mining activities in Appalachia, EPA has completed its initial evaluation of the 79¹ pending Clean Water Act (CWA) Section 404 permit applications. EPA's evaluation was based on the CWA Section 404(b)(1) Guidelines and involved review of all available information on the proposed projects. The results of this evaluation have raised environmental concerns with each of the 79 pending applications, which will be coordinated with the U.S. Army Corps of Engineers (Corps) and other relevant parties during application-specific 60-day periods, to be initiated by the Corps.

Background: EPA has identified 79 pending permit applications for surface coal mining projects in 4 Appalachian states potentially subject to the enhanced coordination procedures of the Interagency Action Plan on Appalachian Surface Coal Mining. Many of these permit applications have been pending for over a year as a result of ongoing litigation and other issues. The review of these applications posed a unique challenge, requiring an enhanced coordination process. The goal of this procedure is to ensure timely, consistent, transparent, and environmentally effective review of these applications, consistent with applicable law and regulations, specifically the CWA Section 404(b)(1) Guidelines (Guidelines). The first step established under the ECP was a review of available information concerning the basic aspects of the proposed projects, focusing on impacts to aquatic resources, by the appropriate EPA Region. The results of this evaluation are presented in a list of permit applications raising environmental concerns that will be coordinated between EPA and the Corps.

EPA's Review: EPA reviewed all proposals identified in the ECP in light of available project data, the existing environmental condition in the watershed, and the nature of environmental impacts predicted to result from construction and operation. This review is in keeping with the requirements of the 404(b)(1) Guidelines, which contain evaluations of a proposed activity's direct impacts, as well as the potential for significant degradation of the broader aquatic ecosystem through either individual or cumulative effects. EPA also utilized a tool called MIRA (Multi-criteria Integrated Resource Assessment) to organize and compare relevant project data and information to assist program managers in their analysis of the ECP list. Program managers from each EPA Region, after reviewing the information provided by the MIRA analysis and conducting further analysis across the entire geographic area involved, identified the applications that raised environmental concerns.

Results: EPA's review of all available data on the permit applications subject to the ECP raised environmental concerns regarding each of the 79 proposed projects. The findings of EPA's initial review do not mean these 79 permits may not be authorized, or that EPA is placing a moratorium on surface coal mining. The ECP provides EPA and the Corps the opportunity needed to review and coordinate to achieve practicable improvements in environmental protection. The set of environmental, technical and procedural circumstances associated with each of these applications is unique. As such, the time needed to commence the 60-day review period initiated by the Corps will vary. CWA permit applications submitted to the Corps after the March 31, 2009 are not subject to the ECP, and are being processed according to the Corps' permitting process, as determined by the

¹ The agencies originally identified 108 permit applications that would be subject to the enhanced coordination procedures. Since the list was originally compiled, 29 projects have dropped off for various reasons, including circumstances where applicants withdrew their permit applications.

respective Corps Districts. Regardless of the nature of a proposed activity or its relationship to the ECP, EPA's goal is to realize opportunities for project improvements that would avoid and minimize impacts to the aquatic environment through timely review of public notices and coordination with the Corps.

Environmental Concerns: In order for any proposed project to be authorized under the CWA Section 404, it must satisfy all requirements of the Section 404(b)(1) Guidelines. Common to all 79 permit applications where EPA has environmental concerns is the potential to be inconsistent with, at a minimum, one requirement of the Guidelines. Many of the mines reviewed indicate the potential to be inconsistent with multiple requirements of Guidelines. EPA's review indicated potential compliance issues primarily with avoidance and minimization of impacts to aquatic resources, water quality, cumulative effects, and/or mitigation.

- The majority of the proposals recommended for further evaluation may not have adequately demonstrated avoidance and minimization of impacts in accordance with the Guidelines.
- Over 80% of the proposals recommended for further evaluation exhibited the potential for excursions from state narrative water quality standards, based on the scientific literature.
- Over 50% of the proposals recommended for further evaluation raise concerns regarding the potential for significant degradation of the aquatic ecosystem, either individually or cumulatively.
- The scientific literature, EPA field experience, and available project information suggest that the mitigation proposed may not be adequate to offset proposed impacts.

Next Steps: The initial list of applications subject to the ECP will be made available on EPA's website for public review for 14 days. EPA will then transmit to the Corps a final list of applications where EPA has environmental concerns. Following this public availability period, any applications for which EPA no longer has environmental concerns may be finalized by the Corps without further action by EPA. For the remaining proposed projects identified for enhanced coordination, each Corps District will notify the appropriate EPA Region in writing when a permit application is ready to begin the 60-day coordination period. EPA and the Corps will then work with all relevant parties, including the project applicant, to resolve remaining environmental concerns.

The environmental, technical and procedural circumstances associated with each of these 79 applications are unique. As such, the time needed to commence and complete the 60-day review period will vary. In the same way, it is expected that for some applications, the environmental concerns will be resolved in less than 60 days. In some instances, EPA and the Corps have already begun discussions on the proposals to identify methods for resolution of environmental concerns. Based on these discussions with the Corps, EPA has also come to understand that some proposals may not be at the stage of evaluation where they are ready for coordination. EPA will continue to work within the established timeframes towards the goals expressed in the MOU of avoiding, minimizing, and mitigating the environmental impacts from Appalachian surface coal mining to the maximum extent practicable under the CWA 404(b)(1) Guidelines, while enabling the continued permitting of environmentally responsible projects.